

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0591
Gross Income Tax—Sale of Assets in Indiana
Tax Administration—Penalty
For 1995**

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ISSUES

I. Gross Income Tax-- Sale of Assets in Indiana

<u>Authority:</u>	IC 6-2.1-1-2(a)(3)	45 IAC 1-1-20
	IC 6-2.1-1-10	45 IAC 1-1-21
	IC 6-2.1-1-11(2)	45 IAC 1-1-49
	IC 6-2.1-2-2(a)(2)	45 IAC 1-1-107
	45 IAC 1-1-7	45 IAC 1-1-113
	45 IAC 1-1-19	45 IAC 1-1-114

II. Tax Administration-- Penalty

<u>Authority:</u>	IC 6-8.1-10-2.1(a)(3)	45 IAC 15-11-2(b)
	IC 6-8.1-10-2.1(d)	45 IAC 15-11-2(c)
	IC 6-8.1-10-2.1(e)	

STATEMENT OF FACTS

The taxpayer is a corporation which manufactured consumer and industrial packaging products such as potato chip and candy bags, coaxial cable steel, and paper and vinyl wire coatings. The Indiana manufacturing plant was sold on March 19, 1995 as part of a corporate dissolution. The taxpayer filed a final return for Indiana on October 15, 1995.

The Department contacted the taxpayer to perform an audit for the final tax return, but was unable to do so when informed by the taxpayer that an audit could not be facilitated at the taxpayer's location. Based on the best information available, the Department assessed gross income tax on the proceeds of the sale of the plant, and the taxpayer

timely protested. The taxpayer thereafter waived his rights to a hearing. Further information will be provided as needed.

DISCUSSION

I. Gross Income Tax—Sales of Assets in Indiana

The taxpayer protests the imposition of gross income tax on the proceeds of the sale of its Indiana manufacturing plant. The taxpayer argues that none of the proceeds were received in Indiana and therefore, there was no need to report the proceeds for gross income tax purposes. Further, the taxpayer argues that since the sale was negotiated and closed outside Indiana by two non-resident corporations, no gross income tax is owed on the proceeds from the sale. Finally, the taxpayer argues that since the corporation has been entirely liquidated, and the sale proceeds at issue were part of the liquidation process, no gross income tax is owed.

The taxpayer's arguments are misplaced. Taxpayer sold its Indiana business assets—i.e., real and personal property. These assets physically reside in Indiana—both prior to and after transfer. Consequently, given taxpayer's establishment of a business situs (location) and tax situs (relationship between business situs and transaction), the fact that sale negotiations were conducted and paperwork completed out-of-state does not transform this intrastate sale of assets into an exempt interstate transaction.

Indiana Code section 6-2.1-1-2(a)(3) defines "gross income" as "all the gross receipts a taxpayer receives from the sale, transfer, or exchange of property, real or personal, tangible or intangible." The Indiana manufacturing plant represents "real property" and "tangible personal property" within the meaning of the statute. Subsection (c) excludes a number of items from "gross income;" none of the exclusions apply. Indiana Code section 6-2.1-1-10 defines "receipts" as applied to a taxpayer as "the gross income in cash, notes, credits, or other property that is received by the taxpayer . . . for the taxpayer's benefit." The taxpayer cannot argue that the sale was not for its own benefit because it was liquidating corporate assets and received in excess of \$20 million dollars for the plant. Indiana Code section IC 6-2.1-1-11 defines "receives," as applied to a taxpayer, as (1) the actual coming into possession of, or the crediting to, the taxpayer, of gross income; or (2) the payment of a taxpayer's expenses, debts, or other obligations by a third party for the taxpayer's direct benefit."

Indiana Code section 6-2.1-2-2 (a)(2) imposes gross income tax "upon the receipt of (1) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." The proceeds of a sale of a manufacturing plant falls within the statutory definition. Therefore the proceeds of the sale are gross income and should have been included in the taxpayer's 1995 final return for gross income tax purposes. This finding is also consistent with the Department's regulations.

Indiana Administrative Code regulations in effect at the time of the 1995 audit closely track the statutory language cited above. For example, 45 IAC 1-1-49 defines a business situs away from the owner/taxpayer's domicile. The taxpayer established a business situs in Indiana through the operation of its manufacturing plant in Indiana, and by maintaining an inventory of goods "for sale, distribution, or manufacture." Similarly, 45 IAC 1-1-17 defines gross income as "the entire amount of gross income received by a taxpayer. This includes all income received. Amounts received or credited include not only cash and checks, but notes or other property of any value or kind and receipts in any form received or credited to the taxpayer in lieu of cash." The gross income attributable to the taxpayer due to the sale of the Indiana plant falls squarely within this definition and does not fall within any exemptions under 45 IAC 1-1-114 or IC 6-2.1-1-2.

FINDING

The taxpayer's protest is denied.

II. Tax Administration—Penalty

The taxpayer protests the imposition of the 10% negligence penalty. The Department will analyze why the penalty should be assessed against the taxpayer for failure to pay gross income tax on the proceeds of the sale of the Indiana manufacturing plant.

Indiana Code 6-8.1-10-2.1(a)(3) authorizes the Department to impose a penalty on a taxpayer if he "incurs, upon examination by the department, a deficiency that is due to negligence." Indiana Administrative Code, Title 15, Rule 11-2(b) provides in pertinent part:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Indiana Code 6-8.1-10-2.1(d) allows the taxpayer to "show that the failure to . . . pay the deficiency . . . was due to reasonable cause and not due to willful neglect." If the taxpayer meets this burden, "the department **shall** waive the penalty. (emphasis added).

The taxpayer erroneously assumed because negotiations concerning the sale of the Indiana manufacturing plant did not occur in Indiana, and transfer of the proceeds did not involve Indiana domiciliaries, the proceeds of the sale were not gross income and

therefore not subject to Indiana's gross income tax. However, taxpayer sold Indiana property. The statutes cited in section I, supra, could not be clearer. The statutory language establishes an affirmative duty on taxpayers conducting business within the state of Indiana to pay all applicable taxes. Taxpayer failed to do so.

FINDING

The taxpayer's protest is denied.